

Paper A3

Ministerial Disciplinary Process

Business Committee

Basic information

Contact name and email address	John Bradbury, The General Secretary john.bradbury@urc.org.uk
Action required	Decision.
Draft resolution(s)	<p>Resolution 6</p> <p>1. Assembly Executive accepts the recommendations of the Morgan Report as the basis for the preparation of an enhanced Ministerial Disciplinary process.</p> <p>Resolution 7</p> <p>2. Assembly Executive instructs the working group (comprising Sharon Barr (Designated Safeguarding Lead), John Bradbury (General Secretary), Nicola Furley Smith (Secretary for Ministries) Andy Middleton (Head of Legal Services) and Sarah Moore (Clerk)) to continue to work with Dr Morgan on the preparation of new rules and accompanying processes for a revised process.</p> <p>Resolution 8</p> <p>3. Assembly Executive instructs the Business Committee, in consultation with the Complaints and Discipline Advisory Group, to enable work on the necessary structures and resources that will be necessary to implement a new process.</p> <p>Resolution 9</p> <p>4. Assembly Executive considers the introduction of a revised process to be an urgent matter which should be proceeded with as swiftly as possible.</p>

Summary of content

Subject and aim(s)	To review the current process and compare with the regulatory boards and other denominations to assess best practice.
Main points	
Previous relevant documents	The Executive Summary by Dr Ed Morgan, KC (appended).

Consultation has taken place with...	The Business Committee and The United Reformed Church Trust, Complaints and Disciplinary Advisory Group and Dr Ed Morgan, KC.
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Summary of impact

Financial	
External (eg ecumenical)	None.

Review of the Section O Ministerial Disciplinary Process

After 15 or so cases, the *Business Committee and the United Reformed Church Trust*, along with the *Complaints and Disciplinary Advisory Group* decided to review the Section O process. It commissioned Dr Ed Morgan KC to review the process and compare with a range of other denominations and regulatory boards to assess current best practice. Dr Morgan is an expert in employment and ecclesiastical legal cases and sits as a judge in the Catholic diocese of Salford and holds both a PhD and a doctorate in Canon Law. He has given the URC excellent assistance, and representation, in various cases over many years and knows us well.

Ed's professional practice includes working with the regulatory bodies of various professions and knows this area of law and practice very well indeed. He compared our regulatory system with the Church of England, the Catholic Church, the General Medical Council, the Nursing and Midwifery Council, the Bar Standards Board, and the Care Quality Commission.

Assembly Executive is being provided with the Executive Summary of the Morgan Report, and also with this paper which sets out the key recommendations. It is a paper version of an on-line consultation tool developed by Andy Braunston to enable feedback to be received by interested parties. We are grateful to Andy for summarising the key elements of the report in a more accessible and contextualised fashion than the Executive Summary itself. The Executive Summary and recommendations from Ed are printed below this initial summary of key aspects of the report.

Core standards of behaviour

The expectations that Ministers and CRCWs must adhere to are outlined in a number of places - their promises made at ordination/commissioning and at subsequent inductions (Schedules C and F of the Basis) a general standard outlined in Schedule E, as well as adherence to the Statement on the Nature, Faith, and Order of the URC (Schedule F) and the Guidelines on conduct and behaviour as well as the Marks for Ministry.

Morgan recommends that we clearly formulate in one place those behaviours which would trigger a disciplinary response, based on the documents noted above, so that it is clearer what is essential in effective and safe ministry.

A duty to cooperate

There is no requirement in our disciplinary process at the moment for a minister to cooperate with it whereas such requirement is required in the Church of England and is implied in the Code of Canon Law of the Catholic Church. The General Medical Council, Nursing and Midwifery Council and Bar Standards Board all require cooperation in their disciplinary processes from those they regulate.

Some of these bodies also require a duty to report possible acts of misconduct too. We currently don't have such a duty to disclose.

Morgan recommends adding a duty of disclosure and a duty of co-operation into our processes (with the caveat that there may be legal reasons driving non-engagement).

Jurisdiction

Our current process is worded to imply that our jurisdiction is only concerned with a minister's behaviour when in office with us not about any pre-ordination or pre-transfer to the URC behaviour. Yet Morgan notes that other denominations have been interested in behaviour prior to joining that denomination.

The URC has had to deal with allegations of misconduct between issuing a Certificate of Eligibility and acceptance of a Call.

Morgan suggests drafting provisions outlining the URC's jurisdictional reach in our process including identifying matters where the URC is unable to exercise regulatory oversight.

Morgan suggests that the conduct in question must have arisen when the person implicated was in active ministry with us or otherwise discharging an official role, office or function within the URC.

Limitation period

Whilst our processes are not governed by statute the principles of Common Law require regulatory matters to be progressed in a timely manner. Article 6 of the European Convention on Human Rights has meant that regulators have adopted rules which define the period where proceedings might be initiated, pursued, and appealed.

The Church of England has a limitation period (within a year of the alleged misconduct) but that can be waived if there were good reasons for the matter not to be brought within the time limit, where the matter concerns sexual activity with a child or vulnerable adult, or in a sexual matter where the President of Tribunals feels the matter should proceed.

In the Catholic Church, matters must normally be within the last three years, save for the most serious allegations which are reserved to a Vatican body. Offences against children have an extended limitation period of 20 years from the complainant's 18th birthday. However, there is power to depart from this rule on a case-by-case basis.

The General Medical Council has a limitation period of five years, which can be extended if in the public interest. Litigation has shown the importance of clarity around the definition of the limitation period itself and the public interest which might extend it.

The Nursing and Midwifery Council has no limitation period, but Morgan thinks this will not spare them from legal challenges.

The Bar Standards Board has no limitation period, neither does the Quality and Care Commission but the latter can bring criminal prosecutions and, if they do, have to comply with legal limits to bring a prosecution.

Morgan recommends we have a limitation period after alleged misconduct for a complaint to be made (with some exceptions in serious cases) and that in criminal cases the limitation period would start with the date of conviction.

Preliminary investigation

Best practice separates out the investigation of an allegation from the initial assessment of whether or not to proceed further with a disciplinary process. This initial assessment is often called a 'triage' or 'screening' stage.

A decision not to proceed might be because the allegation has nothing to do with the professional standards required, that there is insufficient evidence to support the allegation, or that the concern has been addressed by other means and the underlying issue has been resolved.

The way such screening might be carried out should be fair, transparent, proportionate and accountable. Morgan suggests a range of changes to allow the screening stage to reflect best practice:

1. Greater clarification of the role of the Moderator who is currently part of the ASPD to avoid any sense of partiality or conflict of interest.
2. Suspension should be imposed for defined periods and/or subject to periodic formal review.
3. The minister concerned should be able to request a review of any suspension.
4. The Investigation Team should provide periodic updates on progress to allow transmission of additional material to the minister and to assist with reviews of any interim measures.
5. The ASPD should be given powers to intervene in the case of excessive delays and to be able to progress matters to a conclusion.
6. The ASPD needs greater clarity about when, how and by whom suspension decisions are made.
7. Remove Investigation Team power to decide whether to proceed or dismiss.
8. Reconsider role of ASPD within the initial investigatory process giving ASPD power to instruct Investigation Team to pursue additional lines of enquiry in response to matters raised by the Minister or the ASPD itself.
9. Further clarify existing ASPD powers to end a process.
10. Restrict safeguarding input to only those cases where there is a safeguarding concern.
11. Allow the minister concerned to see and make representations on any safeguarding advice.

12. Provide for a case to be reopened or reviewed in the light of additional evidence.

13. Review how a minister is helped to return to ministry after a matter is dropped.

Interim measures

It is common across procedures of many professional bodies for 'interim measures' to be imposed by a panel specifically constituted for the purpose in order to manage issues that arise in a specific case from investigation up to hearing. These are neutral in effect and do not convey culpability.

Typical measures are a suspension from office. Such a suspension might be from all aspects of ministry or might be from some aspects only. In other processes there is normally some sort of a hearing to determine such interim measures which would be subject to review and time limited. There would normally be a right of the regulator (the church in this case) and the minister to make applications to an interim panel with regard to these measures.

Currently suspension (full or partial) is the only interim measure available in the URC and no hearing involving the parties takes place to assess whether these are necessary, so the minister's views are not widely heard on this matter.

Other interim measures such as supervision or conditions on exercising ministry might also be possible as well as suspension. There are a range of recommendations:

The creation of an Interim Orders Panel drawn from the Assembly Commission for Discipline.

1. The Interim Orders Panel should make all decisions on interim measures.
2. Rules should be drafted to reflect the interim measures do not involve any predetermination or finding of fact.
3. Interim measures should be of limited duration and subject to periodic review.
4. Consideration should be given to having a 'long stop' date beyond which interim measures can't be extended.
5. Provision should be made to extend interim measures at the time of the final hearing in relation to the findings of fact and the eventual imposition of any sanctions.
6. Guidance and training should be issued to the Interim Measures Panel.
7. Decisions by the Interim Measures Panel should, save for emergency or exceptional situations, be made at hearing where the Minister and the ASPD are represented.
8. If interim measures are imposed in an emergency or exceptional situation a hearing with the ASPD and Minister represented should happen within seven days.
9. Interim measures should include supervision, ministry with conditions and suspension (full or partial).

Formulation of allegations

Morgan suggests precise formulation of allegations which are consistent with the evidence available. He also suggests limiting the Investigation Team to reporting on evidence not making findings of fact or assessing seriousness. There are a range of recommendations:

1. The Investigation to report upon evidence does not make conclusions about it.
2. The decision to refer to a Matter to the Assembly Commission should be a decision of the ASPD alone.
3. A referral should always have a clear schedule of allegations.
4. The schedule of allegations should be referred to the minister and responses from the minister should be considered before referral to the Assembly Commission.
5. Any application to amend the Schedule of Allegations should be made to the Assembly Commission at or before the final hearing.
6. Guidance and training should be given to all who exercise a role in this process.
7. The final drafting of Allegations should be undertaken by an independent person retained to represent the ASPD at the final hearing.

Discontinuance

Any judicial process comes up against reasons why it might be proportionate to discontinue – evidential difficulties, non-cooperation of a witness, or where new evidence emerges and/or when a complainant does not wish to proceed. A regulatory process must engage with these developments in order to be fair.

Irrespective of evidential difficulties it is also incumbent on the Church to review the sustainability of any case it is bringing under Common Law and from the European Convention on Human Rights.

Many regulators, therefore, reserve to themselves the power to discontinue a case as and when procedural challenges arise. There are various recommendations:

1. The redrafting, in our process, of reasons why a matter might be discontinued.
2. The delegation of a decision to discontinue to the presenting officer or to the ASPD.
3. The ability of the minister to make representations about withdrawal of allegations.
4. The Assembly Commission's role to be limited to the final hearing and withdrawal/amendment of allegations

The Substantive Hearing

Morgan suggests that we develop a set of rules for the Hearing which include the presumption of 'innocence', and rules on: the admissibility of evidence; granting of powers to proceed in the absence of the Minister; referral to a medical panel; recording of proceedings; express disclosure obligations on the Investigation Team; rights of

representation for presenting officer and minister, provision of legal advice via an assessor or legally qualified chair, rules on voting by the Commission, powers of the Commission when allegations are upheld and the right of appeal.

Some of these are already in our current system.

Procedural personnel

Morgan suggests procedural fairness must be seen not presumed. He notes it is important to have clarity about roles and a separation of functions in order for any process to be seen as fair and impartial.

Morgan suggests having three distinct phases in the process - notification and investigation, 'interlocutory management' (ie an intermediate stage of hearings to decide procedural issues and rule on interim measures) and the final determination and beyond.

Further Morgan suggests one way of managing this is to contract the role of the IT, so it no longer makes judgements on seriousness, expansion of the ASPD to manage proceedings, the appointment of a presenting officer to 'prosecute' on behalf of the ASPD and either a legally qualified ACD chair or a legal assessor/clerk to assist. These are suggestions to underpin the principles outlined in the first and paragraphs above.

Sanction

Morgan suggests that the URC publish guidance to Assembly Commissions about sanctions and about specific forms of behaviour considered incompatible with participation in ministry. Morgan notes the Church of England, the General Medical Council, the Nursing and Midwifery Council, and the Care Quality Commission have all published guidance on sanctions.

Morgan suggests, then, the URC develop and publish guidance on the sanctions that can be imposed following findings of fact, where the sanctions are seen as proportionate to the behaviour complained of.

Right of appeal

Morgan suggests making the grounds of appeal clearer, consider if the Investigation Team/Presenter should retain a right to appeal and, if so, consider whether to limit their grounds to the proportionality of any sanction imposed, making provision for interim measures pending the determination of any appeal and defining more clearly the powers of the appeal panel – for example is it simply a review of the Assembly Commission or a new hearing.

Safeguarding

Morgan notes that the protection of those who by virtue of age, infirmity, or other personal characteristics is not simply a legal obligation but a fundamental tenet of Christian teaching and practice. He holds that effective safeguarding should be 'ingrained in all aspects of ecclesial life and participation.'

He notes, however, that for confidence to be maintained in regulatory processes there needs to be clarity and transparency – particularly around the role of safeguarding.

Morgan outlines the complexities when safeguarding processes involve external referrals – to the Local Authority Designated Officer and/or the police.

Currently safeguarding advice is given to the ASPD and Assembly Commission but does not have to be disclosed to the Minister. Safeguarding advice must be given to the ASPD in every case – whether or not the concern is about a safeguarding issue. Morgan is concerned that this allows safeguarding to be weaponised and hid behind rather than being used as a tool in an open and transparent process.

Morgan recommends various proposals:

1. Drawing a clear distinction between allegations which are within the remit of safeguarding and those which aren't.
2. Any advice given from a safeguarding professional is treated as any other adduced evidence – in other words it should be presented to the Minister, and Commission, and is open to challenge and response.
3. Making clear that at any stage of the disciplinary processes a matter can still be referred into safeguarding processes alongside the disciplinary process.

Other matters the report notes

- Other office holders should be included in the discipline process eg Elders, Assembly Accredited Lay Preachers and Pioneers (note, those working with Ed Morgan KC on this report are very skeptical about this and wish to seek further advice from him. We believe that there is a fundamental difference between a fitness to practice process that is about someone's vocational status as a minister and their ability to exercise ministry at all, and the exercise of a voluntary role in a particular place. From initial further conversation with Ed, he is open to this distinction. We all note that structural aspects of an enhanced Section O process may be utilised within another process for office holders – for example investigation resources, or the expertise of those who make up commissions).
- Create a stronger code of conduct with guidance on behaviours that would initiate the disciplinary process.
- Expect the Colleges to uphold the expectations we place on ministers to students.
- Adapt the process for ministers not under our jurisdiction but in possession of a Certificate of Eligibility to come onto our Roll.

Appendix

The URC Interim Report Executive Summary, by DR Edward Morgan, KC.